

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lucinda Richard	Team: Team # 6	CCRB Case #: 200608529	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/25/2006 1:35 AM	Location of Incident: § 87(2)(b) § 87(2)(b) and also outside § 87(2)(b)	Precinct: 44	18 Mo. SOL 12/25/2007	EO SOL 12/25/2007	
Date/Time CV Reported Sun, 06/25/2006 11:46 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/28/2006 6:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Osvaldo Nunez	03579	918086	044 PCT
2. POM Mark Offenbacher	08623	939139	044 PCT
3. Officers			044 PCT
4. An officer			044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Tiffany Dozier	07879	938398	044 PCT
2. POM Harry Bonhomme	28127	938087	044 PCT
3. POF Melissa Rodriguez	13134	939349	044 PCT
4. POM Raphael Gomezgonzalez	03837	938587	044 PCT
5. POM Joseph Castaldo	15457	938189	048 PCT
6. LT Philip Rivera	00000	916539	044 PCT
7. LT Patrick Cortright	00000	910420	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered § 87(2)(b) § 87(2)(b)	
B. Officers	Discourtesy: Inside § 87(2)(b) § 87(2)(b) officers spoke rudely to § 87(2)(b)	
C. An officer	Force: Inside § 87(2)(b) § 87(2)(b) an officer used physical force against § 87(2)(b) and § 87(2)(b)	
D. An officer	Force: Inside § 87(2)(b) § 87(2)(b) an officer struck § 87(2)(b) with a nightstick.	
E. SGT Osvaldo Nunez	Force: Outside § 87(2)(b) Sgt. Osvaldo Nunez struck § 87(2)(b) with a nightstick.	

Officer(s)	Allegation	Investigator Recommendation
F.SGT Osvaldo Nunez	Force: Outside § 87(2)(b) Sgt. Osvaldo Nunez hit § 87(2)(b) against a mailbox.	
G.POM Mark Offenbacher	Force: Outside § 87(2)(b) PO Mark Offenbacher struck § 87(2)(b) with a nightstick.	
H. An officer	Force: Outside § 87(2)(b) an officer struck § 87(2)(b) with a nightstick.	
I.SGT Osvaldo Nunez	Force: Outside § 87(2)(b) Sgt. Osvaldo Nunez used pepper spray against § 87(2)(b)	

Synopsis

On June 25, 2006, at approximately 1:15 a.m., officers from the 44th Precinct responded to § 87(2)(b) in the Bronx, because of a loud party that was taking place there. Officers entered the apartment (Allegation A) and allegedly told § 87(2)(b) to “turn the fucking music down” (Allegation B). An officer allegedly used physical force against § 87(2)(b) and § 87(2)(b) (Allegation C) and then struck § 87(2)(b) with a nightstick (Allegation D). After the officers had broken up the party and exited the building, Sgt. Osvaldo Nunez approached a group of partygoers that were refusing to disperse from the area. One male, § 87(2)(b) refused to leave when asked several times to do so. Sgt. Nunez allegedly struck § 87(2)(b) with a nightstick (Allegation E) and then pushed him against a mailbox (Allegation F). Officer Offenbacher and another unidentified officer got involved and allegedly struck § 87(2)(b) with their nightsticks (Allegations G and H). Once they had handcuffed § 87(2)(b) Sgt. Nunez placed him in a patrol car and allegedly pepper sprayed him (Allegation I).

§ 87(2)(g)

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Summary of Complaint

Complainant/Victim Statement: § 87(2)(b)

On June 25, 2006, § 87(2)(b) called IAB and filed the following complaint (enc. 8a-c) that was later forwarded to the CCRB (enc. 11a-c).

On June 25, 2006, at approximately 1:15 a.m., § 87(2)(b) was having a graduation party at her apartment, located at § 87(2)(b) § 87(2)(b) in the Bronx. The party was over crowded and someone called the police to complain about the noise. The officers that responded were from the 44th Precinct and dressed in uniform. They pushed their way into the apartment and, upon gaining entry, told § 87(2)(b) and her guests to “turn the fucking music down and get the fuck out.” The officers started pushing § 87(2)(b) s guests. Then, some uniformed officers entered a room in her apartment where her cousin, § 87(2)(b) was watching television. A uniformed officer started hitting § 87(2)(b) Also, Sgt. Nunez began hitting § 87(2)(b) s sister, § 87(2)(b) when her brother, § 87(2)(b) who has a mental illness, jumped in between them and tried to stop Sgt. Nunez from hitting § 87(2)(b) Sgt. Nunez turned around and hit § 87(2)(b) in the head with his nightstick, causing a “knot” to form on § 87(2)(b) s head. Consequently, § 87(2)(b) began to bleed from his head. Officer Dozier also issued summonses to two of § 87(2)(b) s sisters.

The investigator called § 87(2)(b) and § 87(2)(b) six times between July 10 and 27, 2006, and sent them five please-call letters between July 10 and August 8, 2006. They missed their scheduled interviews on July 25, 2006. When the investigator called them on July 27, 2006, their number had been disconnected with no further information provided. When the investigator subpoenaed their telephone number from Verizon Legal Compliance, the subpoena was returned with negative results. After interviewing Sgt. Nunez, the investigator conducted field work at the incident location to determine whether anyone lived at the specified apartment because Sgt. Nunez thought the apartment was abandoned and simply being used on the night of the incident to house a party.

When the investigator visited § 87(2)(b) § 87(2)(b) on December 7, 2006, § 87(2)(b) confirmed that he, § 87(2)(b) and § 87(2)(b) all still reside at the apartment. He stated that § 87(2)(b) is no longer incarcerated, but he did not have any contact information for him. Because of a safety concern, the investigator left a business card and asked that the complainant and victims call the CCRB to set up an interview if they wanted to participate in the investigation. To date, none of them has contacted the CCRB (enc. 39a-i).

Complainant/Victim Statement: § 87(2)(b)

On § 87(2)(b), § 87(2)(b) gave his first statement regarding the incident in question when he told medical personnel at § 87(2)(b) that, two days beforehand, he had been struck in the right buttock and thigh with a nightstick (enc. 9a). On June 30, 2006, § 87(2)(b) made his second statement when he filed a complaint with the CCRB via the agency's on-line website (enc. 12a-d, 13a-b). On July 25, 2006, § 87(2)(b) was interviewed at the CCRB (enc. 14a-e). § 87(2)(b) is a § 87(2)(b)-old Hispanic male, 5'6" tall, weighing 135 pounds, with brown hair and eyes.

On June 25, 2006, around 1:35 a.m., § 87(2)(b) was at § 87(2)(b), where he lives by himself, when he decided to go to the 24-hour store and buy something to eat. He went downstairs, saw two of his friends (§ 87(2)(b) who § 87(2)(b) had been with the whole day, and § 87(2)(b) who walked across § 87(2)(b) to meet them), and began walking to the 24-hour corner store with them. § 87(2)(b) did not know what § 87(2)(b) or § 87(2)(b) was doing before he saw them. § 87(2)(b) and § 87(2)(b) were walking up § 87(2)(b) towards the corner store that is located up the hill. When he crossed 165th Street he saw three marked police cars and one unmarked car parked on the opposite side of § 87(2)(b). There were fifteen-to-twenty officers present. All the officers were dressed in uniform. One officer was dressed in a white shirt and dark pants. § 87(2)(b) and his two friends did not stop to see what the police officers were doing or what was going on across the street. There were some civilians across the street that had been at a party up the hill. There were no police barriers or tape blocking off any area along § 87(2)(b). PO1 (white male, 6'0" tall, built, with short brown hair, dressed in uniform—identified through the investigation as Sgt. Osvaldo Nunez) and PO2 (white male, short, chubby, with blonde hair, and dressed in uniform) approached § 87(2)(b). § 87(2)(b) and § 87(2)(b) Sgt. Nunez said to § 87(2)(b) "You're not supposed to be out here at this time. Go to your house." Sgt. Nunez and PO2 already had their nightsticks out when they approached § 87(2)(b) and his two friends. § 87(2)(b) objected, saying he was going to the store, but Sgt. Nunez told him to go home because he was not supposed to be there. § 87(2)(b) and § 87(2)(b) did not say anything to Sgt. Nunez. § 87(2)(b) turned around to face his building and started walking away slowly. § 87(2)(b) and § 87(2)(b) started to walk away, too. In his CCRB interview, when asked why he was walking slowly, § 87(2)(b) said he never walks quickly.

Suddenly, Sgt. Nunez pushed § 87(2)(b) in the right side of his lower back above the waistband of his pants with a nightstick to try to make him walk faster. Sgt. Nunez pushed § 87(2)(b) with enough force that he stumbled and almost tripped over a rock in front of him. Sgt. Nunez's nightstick was solid black with a handle in the middle of it and he was holding it parallel to the ground with two hands. § 87(2)(b) looked back and asked Sgt. Nunez, "What's goin' on? What happened? What'd you hit me for?" Sgt. Nunez told § 87(2)(b) to shut up and leave. Sgt. Nunez then asked § 87(2)(b) and § 87(2)(b) "Oh, you want some of this?" § 87(2)(b) and § 87(2)(b) said they were just going to leave. They walked faster and left without having any further interaction with any officers. Later, § 87(2)(b) said Sgt. Nunez asked § 87(2)(b) and § 87(2)(b) if they "wanted some of this" later on in the interaction, after Sgt. Nunez had thrown § 87(2)(b) on the mailbox. Still later, § 87(2)(b) stated that Sgt. Nunez asked § 87(2)(b) and § 87(2)(b) if they "wanted some of this" while he was throwing § 87(2)(b) on the mailbox. § 87(2)(b) did not know why Sgt. Nunez said that to § 87(2)(b) and § 87(2)(b) because they had not said or done anything to Sgt. Nunez or PO2.

Initially, § 87(2)(b) said that when he turned around to keep walking towards his apartment, PO2 hit him in his leg with his nightstick. Later, § 87(2)(b) said it was PO4 (white male, in a white shirt and dark pants—§ 87(2)(b) did not recall anything else about his appearance) who hit him in the leg and that it occurred after he was handcuffed while Sgt. Nunez was still holding him by the hands. In his initial written complaint, § 87(2)(b) said an officer hit him in his lower back with the nightstick, not in his leg. PO4 held his nightstick with one hand and hit § 87(2)(b) in the back of his right thigh. Then, PO2 hit § 87(2)(b) repeatedly in his right ribs with a nightstick and PO3 (white male, chubby, a little taller than PO2, with black hair, and dressed in uniform—identified through the investigation as Officer Mark Offenbacher) hit him repeatedly in his left ribs with a nightstick. Then, Sgt. Nunez said, "Just cuff him." Later, § 87(2)(b) said Sgt. Nunez placed him in handcuffs while PO2 and Officer Offenbacher hit him repeatedly in his ribs with their nightsticks. PO2 and Officer Offenbacher held their nightsticks parallel to the ground with two hands and hit § 87(2)(b) with the tips of their nightsticks a total of about six times. Officer Offenbacher had been involved with another civilian, but when Sgt. Nunez and PO2 started arresting § 87(2)(b) Officer Offenbacher came over to assist them. When asked if he was physically or

verbally resisting being handcuffed, § 87(2)(b) said he was being hit and was “flinching,” moving his shoulders forward and backward, but not resisting because he “was still there.” Later, § 87(2)(b) added that he was moving his arms, elbows, and torso from side to side and that his hands “kept slipping.”

In his written complaint, § 87(2)(b) said officers pushed him against a mailbox and handcuffed him before repeatedly hitting him all about his body with their nightsticks. In his CCRB interview, § 87(2)(b) said officers threw him on a nearby green mailbox with multiple units and placed handcuffs on him after PO2 and Officer Offenbacher hit him with their nightsticks. Later, he said Sgt. Nunez grabbed § 87(2)(b)'s hands behind his back, threw him chest-first against the mailbox, and then handcuffed him while PO2 and Officer Offenbacher hit him with their nightsticks for two minutes. It took Sgt. Nunez a couple of seconds to handcuff § 87(2)(b). PO2 and Officer Offenbacher continued to hit § 87(2)(b) with their nightsticks after Sgt. Nunez had placed him in handcuffs. § 87(2)(b) was not frisked or searched at the incident location. A lot of civilians and officers were speaking while § 87(2)(b) was engaged in the physical altercation with the officers, but § 87(2)(b) did not recall anything specific that anyone said. During the physical interaction with Sgt. Nunez, PO2, and Officer Offenbacher, § 87(2)(b) screamed loudly and repeatedly, “What’s going on? What did I do?” Civilians were gathered across § 87(2)(b) where officers had broken up a party, but no one was gathered on the side of the street where § 87(2)(b) was handcuffed.

Then, Sgt. Nunez took § 87(2)(b) to the police car, threw him in the backseat behind the front passenger seat, and closed the car door. Sgt. Nunez opened the rear passenger side door, said, “Oh, by the way,” and sprayed § 87(2)(b) on the right side of his face with pepper spray. Later, § 87(2)(b) stated that Sgt. Nunez said, “Oh, you know what else?” before spraying him with pepper spray. Prior to being pepper sprayed, § 87(2)(b) was looking around and wondering why he had been arrested, but he was not kicking or screaming inside the patrol car. Then, officers drove § 87(2)(b) to the precinct. § 87(2)(b) could not see the faces of the officers who rode with him to the precinct because of the pepper spray in his eyes. During the whole ride to the precinct, § 87(2)(b) kicked and screamed because his eyes burned from the pepper spray. § 87(2)(b) did not know what he was charged with or why he was arrested. Two other people around his age were arrested at the same location and they told § 87(2)(b) that the officers had broken up their party at § 87(2)(b). § 87(2)(b) stressed in his CCRB interview that he was not in attendance at the party and did not know any of the people involved. § 87(2)(b) sustained bruises on his right leg and right lower back as a result of this incident.

Victim Statement: § 87(2)(b)

On June 26, 2006, § 87(2)(b) and her brother, § 87(2)(b) called 911 and were transferred to IAB (enc. 10a-b). § 87(2)(b) filed a complaint about the following incident and then provided a statement to IAB Group #9 on § 87(2)(b), while she and § 87(2)(b) were at § 87(2)(b) (enc. 15a-c).

On June 25, 2006, at approximately 1:15 a.m., § 87(2)(b) was having a graduation party at § 87(2)(b) in the Bronx. There were at least 200 people present in the apartment. Officers from the 44th Precinct entered her apartment without a warrant and one of the officers began screaming and cursing at partygoers. § 87(2)(b) pregnant sister, § 87(2)(b) told the officers that they could not come in, but they entered the apartment anyway. § 87(2)(b) tried to defend § 87(2)(b) by loudly telling officers they needed a warrant to enter. Officer Nunez started cursing at everyone and telling them to get the “fuck” out. As partygoers were leaving the apartment, § 87(2)(b) got into a confrontation with Sgt. Nunez and he grabbed her and hit her in the face. Sgt. Nunez also grabbed her arm, twisted it, pushed her against a couch, hit her in the back with elbow, and then handcuffed her. As Sgt. Nunez was about to hit § 87(2)(b) with his nightstick, § 87(2)(b) intervened and asked the officer what he was doing. At that point, Sgt. Nunez jumped on § 87(2)(b) and started hitting him on the head with a nightstick. § 87(2)(b) was arrested and later released with a disorderly conduct summons that was issued by Officer Tiffany Dozier.

As noted above, none of the occupants of § 87(2)(b) § 87(2)(b) cooperated with the investigator’s attempts to obtain interview statements from them. To date, § 87(2)(b) has not contacted the CCRB and thus an interview statement was not obtained from her during the course of the investigation (enc. 39a-i).

Victim Statement: § 87(2)(b)

On June 26, 2006, § 87(2)(b) and § 87(2)(b) called 911 and were transferred to IAB (enc. 10a-b). § 87(2)(b) filed a complaint about the following incident and then provided a statement to IAB Group #9 on § 87(2)(b), while he was at § 87(2)(b) (enc. 15a-c).

On June 25, 2006, at approximately 1:15 a.m., § 87(2)(b) was having a graduation party for a friend at § 87(2)(b) § 87(2)(b) in the Bronx. There were approximately 60 or 70 people in attendance. Suddenly, police officers “barged in” and started screaming at his pregnant sister, § 87(2)(b). His other sister, § 87(2)(b) told the officers that they did not have a warrant to enter the apartment, so they could not come inside. Sgt. Nieves—whose name § 87(2)(b) was unsure of—smacked § 87(2)(b) with an open hand. Then, an unidentified officer turned around and punched § 87(2)(b) in the face, causing § 87(2)(b) to drop to the floor. Another unidentified officer hit § 87(2)(b) about his body several times with a nightstick. § 87(2)(b) stated that his cousin, § 87(2)(b) was also arrested. § 87(2)(b) was still incarcerated at the time of the IAB interview because he had an open warrant. § 87(2)(b) noted that § 87(2)(b) has many aliases. § 87(2)(b) was treated at § 87(2)(b) for cuts on his head, soft tissue injuries, and bruises to his right arm and lower thigh. None of his injuries required stitches or resulted in broken bones.

As noted above, none of the occupants of § 87(2)(b) § 87(2)(b) cooperated with the investigator’s attempts to obtain interview statements from them. To date, § 87(2)(b) has not contacted the CCRB and thus an interview statement was not obtained from him during the course of the investigation (enc. 39a-i).

Results of Investigation

Additional Victim/Witness Statements Not Obtained

As noted above, § 87(2)(b) was not cooperative with the investigator’s many attempts to contact her during the investigation. Also, there was no arrest report or command log entry for anyone by the name of § 87(2)(b) so it was not possible to interview him. When the investigator spoke to the occupants of the apartment in December, they said § 87(2)(b) had been released, but they did not have any contact information for him, nor did they know of any other name he might have. Also, as § 87(2)(b) noted in his IAB interview, § 87(2)(b) has many aliases and it is difficult to know what name to use when searching for his contact information or arrest report. Therefore, no interview statements were obtained from § 87(2)(b) or § 87(2)(b). At the time of his CCRB interview, § 87(2)(b) said he did not know § 87(2)(b) last name, nor did he have contact information for § 87(2)(b) or § 87(2)(b). The investigator called § 87(2)(b) three times between October 3 and November 17, 2006, and asked for his friends’ contact information, but he was unable to provide it. He said he would find out their information and call the investigator back. To date, he has not contacted the CCRB (enc. 39a-i). Therefore, no witness statements were obtained. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Subject Officer: Sgt. Osvaldo Nunez

On December 5, 2006, Sgt. Osvaldo Nunez was interviewed at the CCRB (enc. 17a-c). Sgt. Nunez is a § 87(2)(b)-old Hispanic male, 6’1” tall, weighing 230 pounds, with black hair and brown eyes. On June 25, 2006, Sgt. Nunez worked a tour that began the day before at 5:15 p.m. and ended at 2:12 a.m. He was the Impact Sergeant and he and his operator, Officer Offenbacher, were dressed in uniform and assigned to RMP number 1483. He read the following from his memo book: “01:25 I had a pick-up of a 10-50 (disorderly group) at § 87(2)(b). Disorderly female named § 87(2)(b) § 87(2)(b) arrested. Two males attempted to prevent her arrest. Total of six arrests. 01:30 62 administrative at the house” (enc. 16a-c).

On June 25, 2006, at approximately 1:15 a.m., Sgt. Nunez and Officer Offenbacher were driving southbound on § 87(2)(b) which is a one-way street, when an elderly man (possibly black or Hispanic) flagged down their car right in front of § 87(2)(b). He pointed to that building and said, “Officers, there’s a fight, there’s a fight.” Later, Sgt. Nunez found out that there had also been a 911 call about a disorderly group at that same location, but he and Officer Offenbacher took the job as a “pick-up” rather than as a radio run. Sgt. Nunez and Officer Offenbacher responded to the loud party inside § 87(2)(b) § 87(2)(b). After breaking up the party, arresting several partygoers, and instructing

the other partygoers to leave, Sgt. Nunez and Officer Offenbacher exited the building. About ten minutes had passed since they first arrived on scene. They exited the building with other unidentified officers, the arrestees, and the crowd of partygoers. The charges for the arrestees included § 87(2)(b). At that time, there were eight or nine police cars present at the incident location. Sgt. Nunez and other officers were moving the crowd southbound on § 87(2)(b) towards an intersection that is about two buildings away from where the party took place. Sgt. Nunez still had his nightstick out for crowd control.

Then, Sgt. Nunez saw a highly intoxicated male (identified through the investigation as § 87(2)(b)) who had been walking with the crowd, but who stopped to congregate with three or four friends. § 87(2)(b) had stopped near a mailbox at the intersection of § 87(2)(b) and West 166th Street, on the opposite side of the street from where the party took place. Sgt. Nunez told § 87(2)(b) to keep moving and clear the area, but he refused to move. His friends kept moving in the same direction as the crowd. Sgt. Nunez told him several times to move, but he refused and said, "Fuck this, I'm not going anywhere. You don't gotta tell me what to do." Sgt. Nunez could tell he was heavily intoxicated because he smelled strongly of alcohol and his speech was slurred. § 87(2)(b) never mentioned not having been at the party and Sgt. Nunez assumed he had been in attendance. Sgt. Nunez grabbed § 87(2)(b) by the arms, but he pulled his arms away and threw his elbows outward. Sgt. Nunez pulled him towards the mailbox, turned him around to face it, and put the front of his body against it. Sgt. Nunez explained in his CCRB interview that it is difficult to handcuff someone who is physically resisting without putting him or her against a wall or some other firm object to prevent them from "wriggling" away from officers. Sgt. Nunez got one handcuff on § 87(2)(b) who kept pulling his arms away from officers, throwing out his elbows, and cursing, but Sgt. Nunez was not able to put the other handcuff on him.

Officer Offenbacher and another officer got involved in handcuffing § 87(2)(b) and one of the officers sprayed pepper spray in his face to prevent him from further resisting arrest. Sgt. Nunez leaned his head back and away from § 87(2)(b) to avoid getting pepper spray in his eyes. The pepper spray affected § 87(2)(b) in that he stopped resisting for a moment and put his head down to avoid getting any more of the spray in his eyes. One of the other two officers was able to get the second handcuff on § 87(2)(b) it took thirty seconds to get both handcuffs on him. Although Sgt. Nunez had his nightstick out for crowd control when he first talked to § 87(2)(b) he put it away and did not strike him with it. He did not know if Officer Offenbacher or other officers had their nightsticks out or struck § 87(2)(b) with them. Then, all six arrestees were transported to the 44th Precinct, but Sgt. Nunez did not transport them. No one was injured as a result of this incident.

Subject Officer Statement: Officer Mark Offenbacher

On January 31, 2007, Officer Mark Offenbacher was interviewed at the CCRB (enc. 19a-c). Officer Offenbacher is a § 87(2)(b)-old white male, 5'9" tall, weighing 194 pounds, with brown hair and hazel eyes. On June 25, 2006, Officer Offenbacher worked from 8:00 p.m. the night beforehand until 4:35 a.m. Officer Offenbacher was dressed in uniform and assigned to "breaking up large parties and conditions work." He did not note in his memo book who his partner was that day. He was assigned to RMP number 2109. Officer Offenbacher did not have his memo book with him at the time of his CCRB interview. However, he faxed the related pages to the investigator and it contained the following relevant entries: "01:10, 10-10 noise at § 87(2)(b) § 87(2)(b) 01:25, three under. 01:35, at 44 Pct. 02:35, arrest processing" (enc. 18a).

On June 25, 2006, at approximately 1:15 a.m., there was a radio run of a noise complaint at § 87(2)(b). Officer Offenbacher, as well as other officers, responded to the call. After having been inside § 87(2)(b) for a period of time, officers called from outside the building and stated that the youths exiting the building were getting violent. Officer Offenbacher and several other unidentified officers exited the building to assist officers in dealing with the crowd. Once outside the building, Officer Offenbacher encountered Sgt. Nunez, who was on the other side of the street addressing a large group of individuals. Officer Offenbacher and several other unidentified officers crossed the street to assist. Sgt. Nunez was telling the group to go home, but the youths responded by telling officers that they did not have to leave because they lived on that block. The youths started moving, but they used what Officer Offenbacher referred to as the "ghetto shuffle," where they dragged their feet and walked very slowly away from the location. As the rest of the group started to slowly inch away from officers, one of the males, § 87(2)(b) continued to resist officers' orders that he leave. He continued to say he would not leave and he stood in front of the officers and refused to move.

Then, Sgt. Nunez and two-to-three other officers (whose names Officer Offenbacher did not recall) grabbed § 87(2)(b) and brought him to the ground by holding his arms and putting him down with his chest facing the ground. Initially, Officer Offenbacher said officers did not slam § 87(2)(b) to the ground or use any excessive force that would have caused him any pain. Later, he said that Sgt. Nunez had his nightstick while officers were handcuffing § 87(2)(b). Sgt. Nunez struck § 87(2)(b) in one of his calves, but Officer Offenbacher did not recall what § 87(2)(b) was doing at that time, if he was resisting, or why Sgt. Nunez struck him. Still later, Officer Offenbacher said that § 87(2)(b) was resisting at that time by squirming his body around, moving his arms, and kicking and thrashing his legs, thereby making it difficult for officers to hold his arms and handcuff him. The officer brought § 87(2)(b) down to the ground quickly and effectively, then other officers placed his arms behind his back and Officer Offenbacher put handcuffs on him. There was a mailbox nearby, but § 87(2)(b) was not placed or hit against it while being handcuffed. Officer Offenbacher then placed § 87(2)(b) in his vehicle and transported him, as well as the other arrestees, to the station house for processing. § 87(2)(b) was charged with § 87(2)(b).

Officer Offenbacher does not carry a nightstick and thus he did not strike any civilian with a nightstick during this incident. Officer Offenbacher did not dispense pepper spray during the incident or hit § 87(2)(b) against a mailbox. He did not recall § 87(2)(b) being placed against a mailbox during his arrest, though he did say there was a mailbox nearby where § 87(2)(b) was arrested. An unidentified officer dispensed pepper spray outside the building, but Officer Offenbacher did not recall at what point, against whom, or why.

Witness Officer Statement: Officer Melissa Rodriguez

On March 1, 2007, Officer Melissa Rodriguez was interviewed at the CCRB (enc. 23a-b). On June 24, 2006, Officer Rodriguez worked from 8:00 p.m. to 4:35 a.m. the following day. She was assigned to the 44th Precinct Impact Conditions Auto, which was RMP number 2470. Her partners were Officer Castaldo, Officer Gomez-Gonzalez, and Officer Dozier. Officer Rodriguez and her partners were dressed in uniform. Officer Rodriguez read the following relevant memo book entries: "01:15, 10-10 disorderly at § 87(2)(b). 01:25, 6 under from the location, 10-2 to the house. 01:55, one C-summons served and defendant released, 98" (enc. 22a-c).

Officer Rodriguez gave a statement as to her role in the incident. She was not involved in and did not witness § 87(2)(b)'s arrest that took place outside the building.

Witness Officer Statement: Officer Tiffany Dozier

On February 28, 2007, Officer Tiffany Dozier was interviewed at the CCRB (enc. 21a-b). Officer Dozier is a § 87(2)(b)-old white female, 5'5" tall, weighing 140 pounds, with brown hair and blue eyes. On June 25, 2006, Officer Dozier worked from 8:00 p.m. the night beforehand until 4:35 a.m. She was dressed in uniform and assigned to House Party Enforcement in RMP number 2740. At the beginning of the night, she was working with Officer Gomez-Gonzalez, Officer Castaldo, and Officer Melissa Rodriguez. They were in the same RMP as she was. However, at the time of the incident in question, Officer Dozier had joined Officer Offenbacher in RMP number 1755 and separated from the other officers. She stated that they all work in a team and often change configurations during their tour. Officer Dozier read the following from her memo book: "01:11 hours, we arrived at § 87(2)(b) for a Quality of Life check. At 01:20, I issued one summons for § 87(2)(b) to § 87(2)(b) date of birth § 87(2)(b) § 87(2)(b) summons number § 87(2)(b). I also issued a summons to § 87(2)(b) date of birth § 87(2)(b), § 87(2)(b) summons number § 87(2)(b). At 01:30, we were at the 44th Precinct with four people under arrest from the above location" (enc. 20a-b).

Officer Dozier described her role in the incident inside § 87(2)(b) § 87(2)(b). After the incident, when she arrived back at the station house, she heard from other officers that one male, § 87(2)(b) had been arrested outside in front of the building. However, she did not witness that arrest and did not know who was involved in effecting it.

Witness Officer Statement: Officer Harry Bonhomme

On March 23, 2007, Officer Harry Bonhomme was interviewed at the CCRB (enc. 25a-b). Officer Bonhomme is a § 87(2)(b)-old Hispanic male, 5'9" tall, weighing 190 pounds, with brown hair and blue eyes. On June 25, 2006, Officer Bonhomme and his partner, Officer Megdanis, were assigned to the 44th Precinct

Quality of Life vehicle which was RMP number 2109. They worked from 8:00 p.m. on June 24, 2006, until 4:35 a.m. the following morning and they were dressed in uniform. Officer Bonhomme read the following from his memo book: "01:39, 1 C summons served" (enc. 24a-b).

Officer Bonhomme was involved in an arrest outside § 87(2)(b) but the arrestee was § 87(2)(b), not § 87(2)(b). Officer Bonhomme and his partner were not involved in and did not witness § 87(2)(b)'s arrest.

Witness Officer Statement: Lieutenant Patrick Cortright

On May 11, 2007, Lt. Patrick Cortright was interviewed at the CCRB (enc. 31a-b). Lt. Cortright is a § 87(2)(b)-old white male, 5'11" tall, weighing 215 pounds, with brown hair and eyes. On June 24, 2006, Lt. Cortright worked a tour that began at 5:30 p.m. and ended at 2:05 a.m. on June 25, 2006. He was the impact lieutenant and he was dressed in uniform. He was assigned to a vehicle, but he did not recall if it was marked or unmarked and he did not note its RMP number in his memo book. He was not assigned to a partner. Lt. Cortright did not have any relevant memo book entries (enc. 30a-b).

On June 25, 2006, at approximately 1:35 a.m., Lt. Cortright responded to a 10-85 call from unknown officers. He arrived at § 87(2)(b) in the Bronx and saw two groups of thirty civilians walking away from the building in opposite directions. No arrests were effected while Lt. Cortright was present and therefore he did not physically participate in or witness § 87(2)(b)'s arrest.

Witness Officer Statement: Lieutenant Philip Rivera

On May 25, 2007, Lt. Philip Rivera was interviewed at the CCRB (enc. 32a-b). Lt. Rivera is a § 87(2)(b)-year-old Hispanic male, 5'9" tall, weighing 190 pounds, with brown hair and eyes. On June 25, 2006, Lt. Rivera worked a tour that began the previous day at 5:30 p.m. and ended at 2:05 a.m. He was the Special Operations lieutenant and he did not recall who his partner was. He was dressed in uniform and assigned to a marked RMP whose number he did not recall. He did not have his memo book with him during his interview.

On June 25, 2006, at approximately 1:25 a.m., Lt. Rivera responded to § 87(2)(b) for a large party that officers were breaking up. While Lt. Rivera was present, a short, chubby, Hispanic male threw a glass bottle towards the building. Lt. Rivera instructed other officers to arrest him. That was the only arrest Lt. Rivera witnessed and he had no physical contact with the arrestee or any other civilian during the incident.

Witness Officer Statement: Officer Joseph Castaldo

On April 25, 2007, Officer Joseph Castaldo was interviewed at the CCRB (enc. 27a-b). Officer Castaldo is a § 87(2)(b)-old white male, 5'8" tall, weighing 180 pounds, with brown hair and brown eyes. On June 25, 2006, Officer Castaldo worked from 8:00 p.m. the night before until 4:35 a.m. Officer Castaldo was assigned to Impact Auto 1 in marked RMP number 2740. He was dressed in uniform and did not note in his memo book who his partner was that day. Officer Castaldo read the following from his memo book: "At 12:25 a.m. on June 25, I had an arrest in front of § 87(2)(b). At 12:50 a.m., I went administrative at the house to process the arrest" (enc. 26a-c). Officer Castaldo stated he did not leave the station house again until 7:00 a.m. to go to court. At the time of the incident in question, Officer Castaldo was at the station house.

Witness Officer Statement: Officer Raphael Gomez-Gonzalez

On April 25, 2007, Officer Raphael Gomez-Gonzalez was interviewed at the CCRB (enc. 29a-b). Officer Gomez-Gonzalez is a § 87(2)(b)-old Hispanic male, 6'0" tall, weighing 180 pounds, with black hair and brown eyes. On June 25, 2006, Officer Gomez-Gonzalez was dressed in uniform and worked a tour that began on June 24, 2006, at 8:00 p.m. and ended at 4:35 a.m. the following morning. He and his partner, Officer Castaldo, were assigned to Impact Auto 1, RMP number 2740. Officer Gomez-Gonzalez did not have any relevant memo book entries (enc. 28a-b).

On June 25, 2006, at the time of the incident in question, Officer Gomez-Gonzalez was at the station house with Officer Castaldo, who was processing an arrest.

Medical Records

§ 87(2)(b) visited § 87(2)(b) on § 87(2)(b) (enc. 33a-l). He complained of pain to his right thigh and buttock. He stated he had been struck in those areas with a nightstick. § 87(2)(b) was diagnosed with contusions to his right thigh and buttock. He was instructed to take Motrin for the pain and return to the hospital if the pain increased.

Police Department Documents

According to SPRINT job number N00947, at 1:13 a.m., on June 25, 2006, the 44th Precinct Impact Sergeant picked up a dispute/fighting group job at § 87(2)(b) second floor. The Impact Sergeant requested additional units to the location (enc. 34a). According to the 44th Precinct roll call, the following officers were working Impact during tour one on June 25, 2006 (enc. 35a-b). Officer Bonhomme, Officer Rivera, and Officer Offenbacher were assigned to RMP number 2109; Officer Castaldo, Officer Dozier, Officer Rodriguez, and Officer Gomez-Gonzalez were assigned to RMP number 2740. There were no lieutenants working during that tour. However, according to the tour 3 roll call for June 24, 2006, the following lieutenants and sergeants were working (enc. 36a): Lt. Cortright was the Impact lieutenant, Lt. Rivera was the Special Operations lieutenant, and Sgt. Nunez was the Impact sergeant. The 44th Precinct command log shows that at 1:30 a.m., Officer Offenbacher arrested § 87(2)(b) and § 87(2)(b). The command log also shows that § 87(2)(b) and § 87(2)(b) were released from the station house with summonses for § 87(2)(b). Their physical conditions were all listed as normal (enc. 37a).

Officer/Complainant Histories

During his ten years of service to the NYPD, the CCRB has substantiated one allegation against Sgt. Osvaldo Nunez (enc. 1a-c). In CCRB case number 200100569, the Board substantiated a force allegation—used of radio as club—against Sgt. Nunez, but in an administrative trial, he was found to be not guilty. The CCRB has not substantiated any allegations against Officer Mark Offenbacher during his one year of service to the NYPD (enc. 2a). This is § 87(2)(b)'s first CCRB complaint (enc. 3a).

Complainant's Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

Although § 87(2)(b) and § 87(2)(b) listed some officers' names in their initial complaint narratives, because they did not cooperate with the investigation and provide CCRB interview statements, it could not be determined how they identified those officers. The officers' identities could not be confirmed by their own statements, either, because there was much confusion as to which officers dealt with which civilian; there were more than 200 civilians in a very small apartment. § 87(2)(g)

Sgt. Nunez was identified as PO1 in § 87(2)(b)'s arrest because of his own statement. He identified himself as the officer that first stopped § 87(2)(b) and told him to leave the location. Sgt. Nunez was identified as PO1 rather than PO2 because he more closely matched the description given by § 87(2)(b) for PO1. § 87(2)(g)

At times he said it was PO2, while at other times he said it was PO4. No officer on scene matched the descriptions given and no officer's statement placed him at the scene of § 87(2)(b)'s arrest. § 87(2)(g)

PO3 was identified as Officer Offenbacher because of the description given by § 87(2)(b) and because Officer Offenbacher stated that he came over to assist other officers during the course of the arrest, thereby confirming his role as that of PO3. PO4 could not be identified because all of the lieutenants that were identified through the investigation stated they did not participate in § 87(2)(b)'s arrest.

Undisputed and Disputed Facts

It is undisputed that on June 25, 2006, at approximately 1:30 a.m., officers responded to § 87(2)(b) because of a loud party where young partygoers were drinking and spilling out into the hallway. § 87(2)(g)

It is undisputed that Sgt. Nunez told § 87(2)(b) to disperse from the incident location. It is also undisputed that he did not immediately comply with that order and that Officer Offenbacher approached the situation to assist Sgt. Nunez in handcuffing § 87(2)(b). § 87(2)(g)

Assessment of Evidence

§ 87(2)(b) first denied resisting officers' attempts to handcuff him. However, later he said that he was moving his shoulders forward and backward, as well as moving his arms, elbows, and torso from side to side. He also added that his hands "kept slipping." Sgt. Nunez said that while he was trying to grab § 87(2)(b) by the arms and handcuff him, § 87(2)(b) repeatedly pulled his arms away and threw his elbow outward. Officer Offenbacher corroborated that § 87(2)(b) was physically resisting Sgt. Nunez's attempts to handcuff him. § 87(2)(g) Sgt. Nunez explained that it was necessary to place § 87(2)(b) against the mailbox to anchor him there and minimize his ability to further resist arrest. § 87(2)(g)

§ 87(2)(b) alleged Sgt. Nunez, Officer Offenbacher, and a third officer struck him repeatedly with nightsticks all about his body. Sgt. Nunez denied striking § 87(2)(b) with a nightstick, as did Officer Offenbacher. Although Officer Offenbacher stated that Sgt. Nunez did strike § 87(2)(b) once in his calf with a nightstick, he did not recall at what point in the incident that took place or what was going on. Later, he said § 87(2)(b) was resisting at that point. § 87(2)(g)

§ 87(2)(b) also alleged that after he was in handcuffs and placed in the patrol car, Sgt. Nunez sprayed him with pepper spray. § 87(2)(g)

Sgt. Nunez denied having sprayed pepper spray at § 87(2)(b). § 87(2)(b) he did say that an officer dispensed pepper spray during § 87(2)(b)'s arrest. Officer Offenbacher stated that an unidentified officer dispensed pepper spray at some point at the incident

location, but he did not recall against whom or at what point during the incident. § 87(2)(g)

Allegation A) Abuse of Authority: Officers entered § 87(2)(b) § 87(2)(b)

Allegation B) Discourtesy: Inside § 87(2)(b) § 87(2)(b) **officers spoke rudely to**

§ 87(2)(b)

Allegation C) Force: Inside § 87(2)(b) § 87(2)(b) **an officer used physical force against** § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(b) alleged that officers entered § 87(2)(b) § 87(2)(b) and cursed. § 87(2)(b) and § 87(2)(b) allegation that an officer struck them inside the apartment. As explained above, the investigator made many attempts to contact § 87(2)(b) and § 87(2)(b) but they missed appointments and eventually stopped responding to the investigators' calls and letters. § 87(2)(g)

Allegation D) Force: Inside § 87(2)(b) § 87(2)(b) **an officer struck** § 87(2)(b) **with a nightstick.**

§ 87(2)(b) and § 87(2)(b) alleged that an officer struck § 87(2)(b) with a nightstick inside their apartment. § 87(2)(g)

Allegation F) Force: Outside § 87(2)(b) **Sgt. Osvaldo Nunez hit** § 87(2)(b) **against a mailbox.**

§ 87(2)(g)

According to Patrol Guide Procedure 203-11, officers may use only the minimum necessary physical force to effect an arrest and overcome physical resistance (enc. 0.5a). § 87(2)(g)

Allegation E) Force: Outside § 87(2)(b) **Sgt. Osvaldo Nunez struck** § 87(2)(b) **with a nightstick.**

Allegation G) Force: Outside § 87(2)(b) **Officer Mark Offenbacher struck** § 87(2)(b) **with a nightstick.**

Allegation I) Force: Outside § 87(2)(b) **Sgt. Osvaldo Nunez used pepper spray against** § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Nunez and Officer Offenbacher struck him repeatedly about his body with their nightsticks. § 87(2)(g)

Allegation H) Force: Outside § 87(2)(b) **an officer struck** § 87(2)(b) **with a nightstick.**

§ 87(2)(b) also alleged that a third officer struck him repeatedly with a nightstick. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: